

## Message Text

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ORIGIN L-03

INFO OCT-01 EUR-25 EA-11 ADP-00 PM-07 NSC-10 SS-15 RSC-01

DODE-00 CIAE-00 INR-10 NSAE-00 /083 R

DRAFTED BY L/PM:LGFIELDS,JR:8/27/73:EXT. 21462

L/T:ECMCDOWELL:8/27/73: EXT. 22716

APPROVED BY L/PM:LGFIELDS,JR

EA/PRCH:RAHOLMES

NAVY/CNO:DFMCCOY

----- 068286

R 271956Z AUG 73

FM SECSTATE WASHDC

TO AMEMBASSY LONDON

INFO AMCONSUL HONG KONG

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E.O. 11652: N/A

TAGS: MARR, HK, UK

SUBJ: DAMAGE TO HONG KONG PIER BY USN VESSEL

REFS: (A) LONDON 07536

(B) LONDON 03388

(C) LONDON A-1745, NOV. 29, 1972

1. DEPARTMENT REGRETS DELAY IN REPLYING TO REFS (A) AND (B); HOWEVER, WE HAVE ONLY RECENTLY RECEIVED THE NAVY'S COMMENT. THE NAVY HAS FURNISHED COPIES OF A WAIVER CERTIFICATE EXECUTED BY A MOD OFFICIAL (EDWIN M. COCKBURN) COVERING THE INCIDENT IN QUESTION WHICH WAS TRANSMITTED TO IT ON MAY 2, 1972 UNDER COVER OF A LETTER FROM THE BRITISH EMBASSY IN WASHINGTON. WHILE WE ARE BEWILDERED BY THE APPARENT LACK OF COMMUNICATION BETWEEN THE MOD AND FCO, THE FACT IS INDISPUTABLE THAT HMG HAS OFFICIALLY ACKNOWLEDGED APPLICATION OF 1942 AGREEMENT AND THUS IS BOUND BY LIMITED OFFICIAL USE

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THE WAIVER IT CAUSED TO BE EXECUTED IN MAY 1972. WITHOUT

ANY OFFICIAL DENIAL OF AUTHORITY FROM HMG, WE MUST ACCEPT APPARENT AUTHORITY OF COCKBURN TO EXECUTE WAIVER FOR MOD AND THEREBY BIND HIS GOVERNMENT.

2. WE HAVE CONSIDERED FCO'S ARGUMENT IN THE BRIGHTY LETTER OF NOVEMBER 22, 1972 THAT THE 1942 AGREEMENT WOULD NOT APPLY TO THE DEPENDENT TERRITORIES IN THE LIGHT OF THE

CUSTOMARY INTERNATIONAL LAW, AS CODIFIED IN ARTICLE 29 OF THE VIENNA CONVENTION ON THE LAW OF TREATIES. THAT ARTICLE STATES THAT "UNLESS A DIFFERENT INTENTION APPEARS FROM THE TREATY OR IS OTHERWISE ESTABLISHED, A TREATY IS BINDING UPON EACH PARTY IN RESPECT OF ITS ENTIRE TERRITORY." NOTHING IN THE AGREEMENT ITSELF INDICATES AN INTENTION TO LIMIT ITS GEOGRAPHICAL SCOPE.

3. HOWEVER, SEARCH OF THE DEPARTMENT'S TREATY FILES ON THIS NEGOTIATION DOES INDICATE THAT THE PARTIES OMITTED FROM PARAGRAPH 4 A TERRITORIAL CLAUSE THAT WOULD HAVE REQUIRED THE PARTIES TO PROVIDE UNDERTAKINGS FOR THE RELEASE OF VESSELS OR CARGO FROM JUDICIAL PROCEEDINGS IN THE COURTS OF TERRITORIAL POSSESSIONS. WE DO NOT BELIEVE THAT THE OMMISSION OF SUCH A CLAUSE SHOULD BE INTERPRETED SO AS NECESSARILY TO EXCLUDE THE POSSIBILITY OF A WAIVER BEING GRANTED BY ONE OF THE PARTIES FOR DAMAGE OCCURRING WITHIN A DEPENDENT TERRITORY.

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** n/a  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 27 AUG 1973  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** golinofr  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
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**Drafter:** LGFIELDS,JR:8/27/73:EXT. 21462  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** N/A  
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**Original Handling Restrictions:** n/a  
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**Review Action:** RELEASED, APPROVED  
**Review Authority:** golinofr  
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**Review Date:** 20 JUL 2001  
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**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** DAMAGE TO HONG KONG PIER BY USN VESSEL  
**TAGS:** MARR, HK, UK  
**To:** LONDON  
**Type:** TE  
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